

# **EXHIBIT P**

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
TELEGLOBE COMMUNICATIONS	:	Jointly Administered
CORPORATION, et al.	:	Bankruptcy Case No.
	:	No. 02-11518 (MFW)
Debtors.	:	
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TELEGLOBE COMMUNICATIONS	:	CIVIL ACTION
CORPORATION, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
BCE INC., MICHAEL T. BOYCHUK,	:	
MARC A. BOUCHARD, SERGE FORTIN,	:	
TERENCE J. JARMAN, STEWART VERGE,	:	
JEAN C. MONTY, RICHARD J. CURRIE,	:	
THOMAS KIERANS, STEPHEN P.	:	
SKINNER, and H. ARNDOLD	:	
STEINBERG,	:	
	:	
Defendants	:	NO. 04-1266 (SLR)

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Wilmington, Delaware  
Wednesday, August 10, 2005  
5:03 o'clock, p.m.

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BEFORE: HONORABLE SUE L. ROBINSON, Chief Judge

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Valerie J. Gunning  
Official Court Reporter

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<p>1 APPEARANCES:</p> <p>2 RICHARDS, LAYTON &amp; FINGER, P.A. BY: GREGORY V. VARALLO, ESQ., 3 C. MALCOLM COCHRAN, IV, ESQ., 4 ANNE SHEA GAZA, ESQ. and 5 CHAD SHANDLER, ESQ.</p> <p>6 Counsel for Telelobe Communications 7 Corporation, et al.</p> <p>8 ROSENTHAL, MONHAIT, GROSS &amp; GODDESS, P.A. BY: KEVIN A. GROSS, ESQ.</p> <p>9 Counsel for the Official Committee 10 of Unsecured Creditors</p> <p>11 YOUNG, CONAWAY, STARGATT &amp; TAYLOR LLP BY: JOHN W. SHAW, ESQ.</p> <p>12 -and-</p> <p>13 SHEARMON &amp; STERLING LLP BY: GEORGE J. WADE, ESQ., 14 JAQUIN ARON, ESQ. 15 DANIEL SCHINOZZI, ESQ. 16 (New York, New York)</p> <p>17 Counsel for Defendants</p> <p>18 - - -</p> <p>19 ALSO PRESENT: DIANE BARRASSO, P.H. D., 20 BARRASSO CONSULTING</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 MR. VARALLO: There was a motion to compel briefs 2 back in February and March and at the July 7 conference 3 before the Court, which I unfortunately wasn't available to 4 make, I was in London at that time, your Honor, and I will 5 tell you I would have rather have been here.</p> <p>6 On July 7, at Page 52 of the transcript, your 7 Honor indicated you would be appointing a special master for 8 privilege issues. I come to that simply having having read 9 the transcript.</p> <p>10 THE COURT: Right. And did that happen?</p> <p>11 MR. VARALLO: It has not. However, which I do 12 have today, which perhaps will move things along, your Honor 13 may remember that some time ago we had made a stipulated 14 motion, both sides agreed to a form of order, put it before 15 your Honor to appoint a special master. Unfortunately, we 16 hadn't followed the correct procedures. Your Honor denied 17 the motion. But I do have a form of order today that has a 18 blank for the name and is otherwise the order that we had 19 stipulated to back in March.</p> <p>20 THE COURT: Well, I think, you know, this was 21 right before I left on a trip, and I have been in trial since 22 I have been back. I could have sworn I crafted something to 23 file, so I will follow up on that.</p> <p>24 MR. WADE: Your Honor, there was an order -- if 25 you don't mind.</p>
<p>Page 3</p> <p>1</p> <p>2 PROCEEDINGS</p> <p>3</p> <p>4 (Proceedings commenced in the courtroom, 5 beginning at 5:03 p.m.)</p> <p>6</p> <p>7 THE COURT: Good afternoon.</p> <p>8 MR. VARALLO: Good afternoon, your Honor.</p> <p>9 THE COURT: I guess the question is whether there 10 are issues other than the issues that you sent me papers 11 about. I'm ready to address those, but if there are others, 12 why don't we address those first.</p> <p>13 MR. VARALLO: Certainly, your Honor. I 14 understand the papers' issues concerns privilege assertions. 15 We also have discrete e-document issues and a request for 16 assistance from the Court relating to a few narrow 17 depositions.</p> <p>18 Is my understanding correct, your Honor?</p> <p>19 THE COURT: Well, I have the electronic data 20 issue. I don't know whether I have the documents on the 21 privilege assertions or not. Maybe I do. What were those 22 documents?</p> <p>23 MR. VARALLO: Perhaps I can be helpful, your 24 Honor.</p> <p>25 THE COURT: Okay.</p>	<p>Page 5</p> <p>1 MR. VARALLO: Please.</p> <p>2 MR. WADE: There was an order dated July 18 in 3 which the plaintiffs' motion to compel is denied unless on or 4 before August 1st the plaintiffs identify with specificity 5 what's in dispute. And then we are supposed to respond by 6 August 15th.</p> <p>7 MR. VARALLO: Your Honor, in response to that 8 order which had to do with apparently where the privilege 9 dispute was extant, we filed a pleading pointing your Honor 10 to the specific briefing pages. That pleading was filed I 11 believe on the 26th of July.</p> <p>12 MR. WADE: That is correct.</p> <p>13 THE COURT: All right. Well, somehow or other I 14 don't think that's in front of me. I don't suppose anyone 15 has any docket item numbers.</p> <p>16 MR. VARALLO: I do, your Honor. In case you 17 asked, I happened to have those items for you.</p> <p>18 THE COURT: All right.</p> <p>19 MR. VARALLO: The briefing that we continue to 20 rely on is plaintiffs' opening brief, which was Docket Entry 21 76 at Pages 17 through 20 and 25 through 40. The defendants 22 addressed the issue in their response at Pages 26 through 23 40. And we put in a reply, Docket Item 91, at Pages 9 24 through 20.</p> <p>25 THE COURT: Now, I have Docket Item 76, Docket</p>

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<p>1 Item 91, and defendants' was?</p> <p>2 MR. VARALLO: Your Honor, I helpfully transcribed</p> <p>3 76 both times. It's 87 is the defendants', your Honor.</p> <p>4 THE COURT: All right.</p> <p>5 MR. VARALLO: And, your Honor, that really frames</p> <p>6 an issue of law as to whether it's possible to assert an</p> <p>7 attorney/client where you're representing two clients on the</p> <p>8 same matter. That's the issue of law that we've briefed up</p> <p>9 for the Court.</p> <p>10 But we also have before the Court issues relating</p> <p>11 to privilege logs. We've got two privilege logs which</p> <p>12 contain what we contend are several hundred improper entries</p> <p>13 identified as privileged documents and we've been promised</p> <p>14 a third privilege log, which we're told will have some 5,000</p> <p>15 entries, and I think it was in response to that on July 7th</p> <p>16 that your Honor said, Hey, we're going to get a special</p> <p>17 master involved.</p> <p>18 THE COURT: All right. I will go back and look.</p> <p>19 I thought I had done that. Perhaps I hadn't.</p> <p>20 MR. VARALLO: Would it be useful to your Honor to</p> <p>21 have the formally agreed upon?</p> <p>22 THE COURT: Yes.</p> <p>23 MR. VARALLO: Okay. I will move on, then.</p> <p>24 So that's the privilege issue, your Honor. Let</p> <p>25 me step forward to talk about e data. There are three e data</p>	<p>1 executives data was searched for Mr. Monty in 2005. However,</p> <p>2 Mr. Monty resigned in 2002. And based on BCE practice, we</p> <p>3 believe that his personal account was deleted from the</p> <p>4 executive server at that point.</p> <p>5 We need to go backup tapes for Mr. Monty,</p> <p>6 although our friends haven't done that, although they</p> <p>7 are doing it for two others I will talk about in just a</p> <p>8 minute, Mr. Lessard and Mr. Pichette. Our first issue is</p> <p>9 should we go to backup tapes for Monty. He's a key witness.</p> <p>10 We have 11 e docs and we believe we need to get to the</p> <p>11 backup tapes.</p> <p>12 The other specific people issues, let me just</p> <p>13 address them briefly. We were recently told another senior</p> <p>14 executive, Mr. Pierre Lessard, had destroyed his documents</p> <p>15 and we're told this after we took his deposition. We're told</p> <p>16 that BCE is searching for Lessard docs on its backup tapes,</p> <p>17 but we don't have a firm date yet by which we'll get these</p> <p>18 and we need these, especially since we've already taken his</p> <p>19 deposition. Obviously, we'll want to reopen the deposition</p> <p>20 once we see the documents.</p> <p>21 The next problem executive is a gentleman</p> <p>22 by the name of Patrick Pichette. He was sent to Teleglobe</p> <p>23 to work in early January 2002. He was there until it blew</p> <p>24 up.</p> <p>25 He went back to BCE and he worked on a laptop.</p>
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<p>1 issues and I will cover them very quickly, understanding the</p> <p>2 lateness of the hour.</p> <p>3 One of those relates to production for specific</p> <p>4 executives in the BCE executive corps. The second relates to</p> <p>5 a new wave of documents just produced today. And the third</p> <p>6 relates to refining and choosing search terms for a set of</p> <p>7 identified folders.</p> <p>8 Let me turn first to the executives. We have</p> <p>9 taken a number of depositions of lower level people in</p> <p>10 this case and we're now at the level of senior executive</p> <p>11 depositions.</p> <p>12 As of yesterday, we had 11 e docs for</p> <p>13 John Monty, the former BCE chairman who decided to buy</p> <p>14 Teleglobe, who decided to pull the plug on Teleglobe, and</p> <p>15 who was simultaneously the Chairman of the Board of</p> <p>16 Teleglobe.</p> <p>17 We respectfully doubt there could be a more</p> <p>18 central witness to this case, and this is a case where we're</p> <p>19 talking about an electronic data company, a company that was</p> <p>20 building a data highway. To have 11 e documents we</p> <p>21 respectfully suggest just doesn't do it. We also have about</p> <p>22 a hundred e-mails from or to Mr. Monty that we collected from</p> <p>23 others that were in others' possession, so we know he had an</p> <p>24 e-mail account.</p> <p>25 We're told that a server on which resided the</p>	<p>1 We're told his laptop hard drive was simply wiped, wiped</p> <p>2 clean when he went back at some point.</p> <p>3 For him, we need to go to backup tapes. We're</p> <p>4 told they are going to backup tapes, but, again, we're not</p> <p>5 told when and his deposition is coming on very quickly. We</p> <p>6 can no longer wait for BCE to take its time to get us this</p> <p>7 information, your Honor.</p> <p>8 Finally, an individual by the name of Mark Ryan.</p> <p>9 Ryan was the corporate secretary who attended most, if not</p> <p>10 all, keyboard meetings. We have zero e-mails from Mr. Ryan,</p> <p>11 none. Once again, your Honor, for whatever reason, this is</p> <p>12 an individual of senior status in the company for whom we</p> <p>13 need backup tape searches.</p> <p>14 On these individuals, we want a court order</p> <p>15 requiring prompt production. These are documents we asked</p> <p>16 for last year, and from our perspective it's simply</p> <p>17 unacceptable that deep into the deposition track we still</p> <p>18 don't have the documents.</p> <p>19 Your Honor, the next e document issue is, relates</p> <p>20 to documents received today. Literally today we received a</p> <p>21 C.D. with 10,000 pages of new documents, apparently located</p> <p>22 from the computers of some but not all of the secretaries of</p> <p>23 the senior executive corps at the company.</p> <p>24 The index we received also suggests that the C.D.</p> <p>25 contains at least hundreds of pages of documents produced</p>



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<p>1 from certain key executives directly, including Mr. Lessard, 2 the general counsel of the company, whose two-day deposition 3 was taken last week.</p> <p>4 Passing for the moment the issue of why BCE 5 didn't search for these documents months ago or the computers 6 months ago, as of today, BCE cannot tell us, notwithstanding 7 our repeated requests, when we'll have all of this data 8 completed or the so-called custodian data completed as well. 9 We ask the Court to put a stop to this. We need a hard date 10 by which BCE will have complied with its discovery 11 obligations.</p> <p>12 We are deep into the discovery schedule. Your 13 Honor will recall that this case was originally set for a 14 discovery cutoff date of September 30, then amended to 15 October, I believe it was 17th the last time we were here. 16 But we've got a number of depositions to do and we simply 17 can't have substantial unproduced documents coming to us 18 after the depositions are done.</p> <p>19 Finally, your Honor, an issue as to folders. 20 During the course of this litigation, we learned of a 21 population of approximately 30,000 folders on live servers at 22 BCE, which were not identified by custodian. They're 23 identified by other titles.</p> <p>24 Many of these folders have Teleglobe in their 25 name or other indicia, indicating that they could be</p>	<p>1 We are prepared today to discuss with the Court, 2 should you want to hear us, why our proposed search is 3 appropriate. My colleague, Ms. Gaza, is prepared to address 4 that. I also have in court today Dr. Diane Barrasso, our 5 e-data consultant. Should the Court have any questions as to 6 methodology or technical questions you need answered, we've 7 got the source. We can bring her to the Court.</p> <p>8 I can say as to the 2900 folders, that we know 9 that 450 of them have Teleglobe in the title. We know about 10 700 relate to finance and we know that about 1200 are board 11 of director related folders.</p> <p>12 So, your Honor, just on that showing, this isn't 13 an idle exercise. We're not talking about folders that have 14 nothing to do with the case.</p> <p>15 To summarize this issue, we want the Court to 16 order BCE to run our search terms on the 2900 folders we've 17 winnowed out of the 30,000 that we believed had previously 18 been unsearched.</p> <p>19 Finally, your Honor, and I will conclude quickly, 20 this is the third issue, some help with specific 21 depositions.</p> <p>22 We have subpoenaed, pursuant to letters rogatory, 23 three, and I'm focusing on three, there are actually more of 24 them, but for purposes of today, there are three that we want 25 to bring before the Court, three entities in Canada:</p>
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<p>1 important to this case. In an effort to compromise and not 2 have to bring this to your Honor, we spent several days 3 reviewing the 30,000 folders, which, by the way, when you 4 print them out, is about 750 pages of folder titles.</p> <p>5 We reviewed those and cut the 30,000 to about 6 3,500, that is about 10 percent of the total. BCE told us, 7 Well, that's too many, please try again. We did. We went 8 back and were able to winnow the 3500 titles to about 2900 9 titles.</p> <p>10 We understand that BCE then did a search over all 11 the -- all of its folders, not merely those we identified, 12 which included the name Teleglobe, and then also did a 13 negative search to winnow out matters unrelated to issues of 14 this case. We're fine with that, your Honor, but we believe 15 it is underinclusive.</p> <p>16 When we were here on July 7, we brought to your 17 Honor's attention the fact that we had a dispute as to an 18 intermediate search, and your Honor directed us to try to 19 work it out. You said if we couldn't work it out, you would 20 be making decisions yourself as to the proper scope of those 21 searches.</p> <p>22 Notwithstanding the Court's direction, BCE simply 23 didn't engage with us in discussions regarding search terms 24 since July 7. Instead, recently, they filed the affidavit of 25 Dr. Felski, their e consultant or e-data consultant.</p>	<p>1 Deloitte &amp; Touche, a law firm called Osler, and a law firm 2 called Davies Warde. Each firm represented BCE, but also 3 represented Teleglobe during the course of important events 4 here. Although Osler claims it didn't, it did file documents 5 with the regulatory authority, holding itself out to be 6 counsel for Teleglobe.</p> <p>7 Each firm has refused to comply with the 8 subpoenas and raised numerous privileges as to the subpoenas, 9 contending that they need not produce a response to the 10 subpoenas or give testimony.</p> <p>11 We've attempted to deal with these by litigating 12 in Canada, but learned from Canadian counsel that the time 13 frame for Canadian litigation on these issues will long 14 overlap your Honor's discovery cutoff. That is to say we 15 will not have prompt and efficient justice in Canada to get 16 to the bottom of these issues. So instead of complaining, we 17 tried to work out practical approaches.</p> <p>18 Our client, the plan administrator, stands under 19 the bankruptcy law and the plan, stands on issues of 20 Teleglobe for purposes of owning its privileges, and so 21 instructed the lawyers that represented Teleglobe and the 22 accountant to produce to her all Teleglobe owned documents 23 with only modest success, your Honor, I will report.</p> <p>24 What we would like to do, we'd like to have the 25 Court involved in, is ask you, first of all, the Court</p>

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<p style="text-align: right;">Page 14</p> <p>1 usually, to suggest to BCE perhaps it could lean on some of  2 these outside providers to move forward in a constructive  3 way, but if that is not possible, what we'd like to do is  4 have an order running to BCE, asking it to demand its  5 documents back from its providers relating to this matter  6 that they could then produce to us so as to circumvent long  7 and involved Canadian litigation.</p> <p>8 Alternatively, if these agents of BCE continue to  9 assert privileges against us, we want it clearly understood,  10 we want to say on the record today that we'll be seeking  11 preclusion orders against their testifying at trial and  12 against BCE attempting to adduce matters at trial through any  13 witness where we were blocked on the subject matter as to  14 privilege in Canada.</p> <p>15 Let me say for the record very clearly and for my  16 friend, Mr. Wade, that this includes matters relating to  17 BCE's accounting. It cannot, we contend, and we will contend  18 at a later date in a formal motion, allow the accountant for  19 BCE, that is Deloitte &amp; Touche, to assert privileges against  20 both producing documents and testifying and then attempt to  21 justify its accounting having blocked or having had its  22 auditors successfully block discovery in the case.</p> <p>23 Your Honor, my voice is giving out. I'm happy  24 to answer any questions, but that's our presentation for  25 today.</p>	<p style="text-align: right;">Page 16</p> <p>1 some more that we will continue to produce.</p> <p>2 I would point out, however, that when we have  3 asked recently for documents from the assistants of the  4 executives of their clients, they've basically told them  5 that, for the most part, they've not attempted to gather  6 those documents and if we want them, we will have to pay to  7 have those documents restored and produced to us. So they  8 are being a little -- I don't want to say hypocritical, but  9 they are being a little cute in saying that there's some  10 outrageous conduct that we are engaging in because we're  11 producing the assistants' documents after some of the  12 executives' documents.</p> <p>13 If there are -- there are good grounds for  14 reopening depositions, then, fine. I mean, often people make  15 that argument about documents that are produced after a  16 deposition. Then you go back and you find that there's not  17 really anything to reopen or there aren't any significant  18 issues, but if they can show some prejudice and if they want  19 to do that, we're happy to consider that.</p> <p>20 With regard to the search on the 300,000 -- I'm  21 sorry -- this 30,000 folder, I think Mr. Varallo might be a  22 little late to the party on this one. This has been  23 extensively discussed in the papers filed with the Court,  24 including the supplemental declaration of Martin Felski, that  25 we filed on August 1st.</p>
<p style="text-align: right;">Page 15</p> <p>1 THE COURT: All right. Thank you.</p> <p>2 MR. VARALLO: Thank you.</p> <p>3 THE COURT: Let's hear from BCE's counsel.</p> <p>4 MS. AARON: Good afternoon, your Honor. My  5 name is Jaculin Aaron. I'm with the law firm Sherman &amp;  6 Stearling LLP, representing the defendants, and I will take  7 Mr. Varallo's points in order.</p> <p>8 With regard to the specific executives and some  9 of the issues relating to the amount of e documents, we are  10 certainly willing to consider going back to the backup tapes  11 and specific instances where the number of e documents that  12 we've managed to obtain from them, from the readily  13 accessible sources has not been very high and so we will  14 certainly talk with them about some of those issues.</p> <p>15 With regard to some of the -- a couple of those  16 executives, there have been additional documents that we have  17 gotten from looking at the e documents of their assistants  18 that we will be producing to them, but we are happy to  19 continue discussing it with them.</p> <p>20 With regard to the issue of the so-called new  21 wave of documents that they produced today that they're  22 complaining about, there are basically -- that includes  23 documents of some of the assistants of the executives at BCE  24 that we determined that we should go back and get and produce  25 to the other side and we're producing those, and there are</p>	<p style="text-align: right;">Page 17</p> <p>1 And the basic story on that, which is set  2 out in Mr. Felski's declaration, is that these 30,000 folders  3 are not new documents. We have been conducting searches on  4 all -- all the data that's contained in all of these folders  5 and we have produced documents to them from the folders.  6 That includes documents that contain the term Teleglobe or  7 related Teleglobe terms, other names for the companies.</p> <p>8 So that data has been subject to a number of  9 searches already and we have produced documents from those  10 searches. When we ran searches that included the word  11 Teleglobe in them or some variation on that, the  12 responsiveness rate on the documents captured was perfectly  13 reasonable.</p> <p>14 When we've run searches on that data where  15 we don't include a variation of the word Teleglobe, we  16 capture very large amounts of data, but the responsiveness  17 rate has been very, very low. In some cases, four, six,  18 ten percent. And what we have maintained is that at this  19 point, we are really getting to the point of diminishing  20 returns on those documents. They've been searched for the  21 Teleglobe documents. We've done other searches to pick up  22 other documents that are related, but at this point, if we  23 conduct the searches that plaintiffs want us to conduct on  24 that group of documents, we are going to gather huge amounts  25 of data and only very small portions of it are potentially</p>



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<p>1 responsive.</p> <p>2 I would like to clear up one point that is</p> <p>3 explained I think at least a couple of times in our papers.</p> <p>4 They have said that some of these folders that they have</p> <p>5 selected have the word Teleglobe in the name of the folders</p> <p>6 and they are outraged that we have not searched in those</p> <p>7 folders. In fact, as we have told them and has been stated</p> <p>8 in Dr. Felski's declaration, if the word Teleglobe appeared</p> <p>9 in a folder, then the documents in that folder would have</p> <p>10 been picked up if they contained one of the other search</p> <p>11 terms. So, in fact, those folders that have the word</p> <p>12 Teleglobe in them have been picked up and are responsive to</p> <p>13 the -- have been picked up and we've produced responsive</p> <p>14 documents from them.</p> <p>15 But with regard to their list of search terms, I</p> <p>16 don't see how they can say that those search terms will</p> <p>17 really pick up anything very interesting to the case.</p> <p>18 For one thing, they have a number of search terms</p> <p>19 that include the word Teleglobe and, frankly, those already</p> <p>20 would have been picked up in the prior searches that we have</p> <p>21 done. But they have searches such as employee within 40</p> <p>22 words of leave. Those are the kinds of searches they are</p> <p>23 proposing and those are just going to pick up ridiculously</p> <p>24 large numbers of documents.</p> <p>25 THE COURT: All right. This is my problem.</p>	<p>1 with where we are in this case and does not bode well for</p> <p>2 your positions in this case. With respect to the new</p> <p>3 documents, on the one hand, you know, you've got a party</p> <p>4 who's complaining about the lack of documents and also</p> <p>5 complaining about the production of documents, so there's</p> <p>6 some inconsistency in there and I don't know which they</p> <p>7 prefer, but we will talk about what happens with document</p> <p>8 production when we're done our whole discussion.</p> <p>9 With respect to the searches, now, I don't</p> <p>10 believe I asked BCE to give me an expert report on why these</p> <p>11 search terms were not reasonable. What I asked was for the</p> <p>12 parties to talk and to reach agreement if they could, and if</p> <p>13 not, then I would hear discussion about it. From what I</p> <p>14 understand, there was no discussion. BCE has taken the</p> <p>15 position and has simply given me an affidavit, which isn't</p> <p>16 what I asked for without some attempt at compromise.</p> <p>17 So, again, I am not happy with BCE's approach to</p> <p>18 what I say and I will have to put everything in writing to</p> <p>19 make sure that it is all understood, although lawyers don't</p> <p>20 seem to understand what I write either.</p> <p>21 So this is the thing. With respect to the backup</p> <p>22 tapes, they will be searched. They will be found. They will</p> <p>23 be reconstructed. They will be searched for these four</p> <p>24 executives.</p> <p>25 With respect to these last searches, I will give</p>
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<p>1 Well, you can move on from this point and on to the last</p> <p>2 point and then I will give you my concern about the way BCE</p> <p>3 has reacted to my instructions at the last discovery</p> <p>4 conference, the depositions, letters rogatory, the two legal</p> <p>5 firms and the accountants who have failed to cooperate in</p> <p>6 getting documents into the case.</p> <p>7 MS. AARON: Okay. Your Honor, I would actually</p> <p>8 like to let my colleague, Mr. Schimmell, address those</p> <p>9 issues.</p> <p>10 THE COURT: Well, then, before you sit down, I</p> <p>11 will address my concern.</p> <p>12 MS. AARON: All right.</p> <p>13 THE COURT: My concern is this: Document</p> <p>14 production was supposed to be done before we take the</p> <p>15 depositions. It's the way it's done in all complex cases in</p> <p>16 my court for the purpose, for the singular purpose of not</p> <p>17 having to go back and redepose someone every time a new wave</p> <p>18 of documents has come in.</p> <p>19 So when you use words like we will consider going</p> <p>20 back, we will continue discussing, that is not what I want to</p> <p>21 hear. Document production is supposed to be done. If there</p> <p>22 are reasons why there have been no documents produced for</p> <p>23 critical people, then you will review the backup tapes, you</p> <p>24 will do the searches.</p> <p>25 So the language that you use isn't consistent</p>	<p>1 BCE a choice. It seems to me as though some of these</p> <p>2 searches are very broad, and so I have identified some that</p> <p>3 seem appropriately narrow to me, and I will give BCE the</p> <p>4 choice of either doing the narrow search that I've just</p> <p>5 randomly selected on the 645 folders that have Teleglobe or</p> <p>6 some derivation thereof in the folder title, the narrow</p> <p>7 search on all 2900 folders or the broader search on the 645</p> <p>8 folders.</p> <p>9 That's your choice, and if we need to, I will</p> <p>10 have counsel for Teleglobe tell me if they had to choose --</p> <p>11 well, I will give you what I think, and if they had to choose</p> <p>12 a few more, I will give them the opportunity to pick a few</p> <p>13 more. But that's where we are with that.</p> <p>14 All right.</p> <p>15 MS. AARON: Okay. Your Honor, if I may, on some</p> <p>16 of these issues, it's a two-way street. I mean, I'm not sure</p> <p>17 that plaintiffs understood the Court's direction at the last</p> <p>18 hearing, which, unfortunately, I did not attend, because they</p> <p>19 basically sent us a list of search terms and said the Court</p> <p>20 ordered you to run all of these searches, please tell us when</p> <p>21 you're going to be done, which I don't think is quite right</p> <p>22 either, so I think there might have been some failure to</p> <p>23 communicate between the parties.</p> <p>24 THE COURT: Well, neither party is going to get</p> <p>25 exactly what they want.</p>

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<p>1 MS. AARON: I understand.</p> <p>2 THE COURT: I don't know what it is that will</p> <p>3 take you all to --</p> <p>4 MS. AARON: The other part of the two-way street</p> <p>5 on terms of late-produced documents, we're waiting for</p> <p>6 documents from their live server data that we don't have yet</p> <p>7 and we asked them, when are we going to get it, and they</p> <p>8 said, When we know, we'll tell you. And they have a long</p> <p>9 story about how we didn't ask for them until the beginning of</p> <p>10 July, but there's a story behind that as well.</p> <p>11 THE COURT: All right. Well, the late production</p> <p>12 of documents is something we'll discuss generally. I think</p> <p>13 it's a problem on both sides, so I don't think I want to hear</p> <p>14 anything more about that right now.</p> <p>15 All right. Let's hear about the depositions and</p> <p>16 the letters rogatory and then we'll get down to the</p> <p>17 nitty-gritty on search terms and talk about how in the world</p> <p>18 we're going to conclude document production so we can go</p> <p>19 forward efficiently with depositions and get this case to a</p> <p>20 point where it can be resolved.</p> <p>21 MR. SCHIMMELL: Good afternoon, your Honor.</p> <p>22 THE COURT: Good afternoon.</p> <p>23 MR. SCHIMMELL: With respect to Deloitte, we</p> <p>24 wrote to them months ago, to ask that Deloitte return to BCE</p> <p>25 documents that BCE had previously made available to</p>	<p>1 returned to us documents that they believed were not</p> <p>2 privileged and that reflected communications that BCE</p> <p>3 had made to Osler, which is what we had asked for.</p> <p>4 We've reviewed those documents. We've produced them to</p> <p>5 the plaintiffs. I'm not sure what else at this point we</p> <p>6 can do.</p> <p>7 The plaintiffs have made an application regarding</p> <p>8 Osler in Canada. I understand that there are depositions</p> <p>9 that are being taken of Osler lawyers. I'm not sure what</p> <p>10 else BCE can do at this point because we've asked, we've</p> <p>11 received some documents, we've reviewed them, we've produced</p> <p>12 them.</p> <p>13 What I forgot to say with respect to Deloitte a</p> <p>14 second ago is that the plaintiffs also went to the Canadian</p> <p>15 courts to seek an order directing Deloitte to produce</p> <p>16 documents and directing Deloitte to produce a witness. The</p> <p>17 Canadian courts rejected that application. They viewed what</p> <p>18 the plaintiffs were asking for as a fishing expedition and</p> <p>19 they said that under Canadian law, they --</p> <p>20 THE COURT: But this is the whole point. I mean,</p> <p>21 if, in fact, you don't intend to use any of these documents,</p> <p>22 any of these witnesses, any of the information through these</p> <p>23 third parties, then I'm not sure if there's a privilege that</p> <p>24 can be asserted in Canada that I have any power. All I am</p> <p>25 saying is that certainly, if you intend to use any of this</p>
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<p>1 Deloitte. So what Mr. Varallo is asking us to do, we've</p> <p>2 already done.</p> <p>3 We've been told and Deloitte had a number of</p> <p>4 discussions with BCE directly about that request. We've been</p> <p>5 told this week that Deloitte does not believe that they have</p> <p>6 the obligation under Canadian law to return any documents and</p> <p>7 they don't want to do it. I'm not sure what else we can do</p> <p>8 at this point.</p> <p>9 THE COURT: I take it you're not a client of</p> <p>10 Deloitte anymore?</p> <p>11 MR. SCHIMMELL: BCE is a client of Deloitte.</p> <p>12 THE COURT: Well, in that case, I'm not really</p> <p>13 convinced. It seems to me that if you -- if asking nicely</p> <p>14 doesn't work in a case, then, truly, you will be precluded</p> <p>15 from using any of their documents, any of their witnesses,</p> <p>16 any of their evidence if you can't manage to get these</p> <p>17 documents produced so that they can see the light of</p> <p>18 day and be tested through discovery. I mean, that's the</p> <p>19 bottom line. Nice letters exchanged. They are your client.</p> <p>20 You pay them. It seems to me if that does not give you</p> <p>21 leverage, then you should find another accounting firm to</p> <p>22 work with.</p> <p>23 MR. SCHIMMELL: we will tell them that.</p> <p>24 With respect to Osler, we made the same request</p> <p>25 of Osler the same time when the plaintiffs asked. Osler</p>	<p>1 information, obviously, you can't use it unless it has been</p> <p>2 produced.</p> <p>3 And even with respect to -- I mean, even if they</p> <p>4 give you all nonprivileged documents, that's better than</p> <p>5 nothing, but, again, my feeling is that the privileged</p> <p>6 documents ought to be listed so at least we know what the</p> <p>7 universe of information is and see where we go from there.</p> <p>8 There was another law firm, I think?</p> <p>9 MR. SCHIMMELL: Davies. My best recollection is</p> <p>10 that until very recently, the plaintiffs did not ask that we</p> <p>11 contact Davies. I understand that there's also an</p> <p>12 application in the Canadian courts regarding Davies. If the</p> <p>13 plaintiffs agree, we'll talk about it. We don't view them as</p> <p>14 particularly relevant.</p> <p>15 THE COURT: All right. Thank you very much. I</p> <p>16 appreciate it.</p> <p>17 MR. VARALLO: Your Honor, may I be heard for 30</p> <p>18 seconds?</p> <p>19 THE COURT: Sure.</p> <p>20 MR. VARALLO: Just for the record, my friend</p> <p>21 apparently doesn't understand we really want Davies, so I</p> <p>22 will say it. We really want Davies documents. We went</p> <p>23 through the process of asking your Honor for letters</p> <p>24 rogatory. We hired Canadian counsel. We served them. We</p> <p>25 really want them. We weren't kidding. So if my friend would</p>



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<p>1 take steps to see what could be done there, that would be 2 appreciated.</p> <p>3 Your Honor, Ms. Aaron, I think your Honor has all 4 my points. I'm not going to make the points your Honor has 5 already stated. But I do want to make of record one point, 6 and that is Ms. Aaron pointed out that she is still waiting 7 for live server data from us. BCE asked for live server data 8 from us on August 1st, 2005. Let me repeat that: August 9 1st, 2005.</p> <p>10 We offered the data by letter in February. We 11 followed up and offered the data by letter again in May. On 12 August 1st, my friends said we want you to copy, effectively 13 copy your servers, give them to us. We're in the process of 14 doing that. That is not, with all due respect, your Honor, 15 late production.</p> <p>16 I don't have anything to add on this unless your 17 Honor has questions.</p> <p>18 THE COURT: All right. I do not at this point.</p> <p>19 MR. VARALLO: Thank you.</p> <p>20 THE COURT: Refresh my recollection as to where 21 we are in the discovery schedule.</p> <p>22 MR. VARALLO: Your Honor, we've got an October 17 23 cutoff date. We have almost -- I believe all of the 24 witnesses are now scheduled.</p> <p>25 MR. WADE: I believe that is true except that</p>	<p>1 They told us in March that they had a full set of backup 2 tapes for all of their e data as of a certain date in April 3 2002. They represented in this court that they would make 4 all of that e data available to us. They represented that in 5 writing several times.</p> <p>6 We said, fine. Let's do that. Then it turns out 7 over the course of several weeks we find out in May that it's 8 not all of the e data, it's just e-mails.</p> <p>9 Then over further weeks, it turns out that it's 10 not all of the e-mails, it's only the e-mails for 11 custodians. Then, when we finally get it, we learn that it's 12 only the e data for some of the custodians.</p> <p>13 So we've had some real issues with trying to 14 figure out from them what they have and what they're willing 15 to give us. We still don't know what that live server data 16 consists of or doesn't consist of. I'm not sure that they 17 know that. But that was the reason why that has been the 18 particular history of what the requests have been.</p> <p>19 THE COURT: All right. It seems to me -- I, 20 frankly, am not sure how long it will take you all to follow 21 up on what I ordered today. I'm going to say by the end of 22 the month, August 31. That is not helpful with respect to 23 the depositions that are still scheduled this month. On the 24 other hand, I'm not sure ordering something shorter than that 25 is actually going to be meaningful if it can't be done.</p>
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<p>1 there are -- we have heard noises that there may be other 2 witnesses that plaintiffs, third-party witnesses that 3 plaintiffs may want to depose. They have nothing done about 4 that yet.</p> <p>5 And then, secondly, we add three or four -- 6 we may add a few more witnesses to our list. But so 7 far I believe the ones that have been named have been 8 scheduled.</p> <p>9 MR. VARALLO: I think that's right, your Honor. 10 We've got good cooperation in scheduling. We've got them 11 scheduled up and they are lined up like airplanes coming into 12 San Francisco.</p> <p>13 There are quite a few of them, and without having 14 complete document production, of course it's hard to 15 effectively do those.</p> <p>16 We've got an October 17 cutoff date. We've got 17 about, I will hazard a guess, 10 to 12 BCE witnesses of the 18 25 or so we'll have to take done and now we're moving to the 19 meat of it. We're moving to the senior executive corps.</p> <p>20 THE COURT: All right.</p> <p>21 MS. AARON: Your Honor, if I may, Mr. Varallo 22 repeated twice something that was incorrect. We made the 23 request for the live server data in early July. The reason 24 that happened that way is that we have been basically the 25 victims of a bait and switch on what they were going to do.</p>	<p>1 So by August 31, 2005, number one, BCE shall do 2 what it has to do to get the backup tapes up and moving, to 3 search those four executives, to search for documents related 4 to these four executives that were named: Monty, Lessard, 5 Pichette and Ryan.</p> <p>6 By August 31, 2005, plaintiff shall make 7 available its live server data, whatever. You all know 8 better what that comprises, but I assume you know what I'm 9 talking about.</p> <p>10 By August 31, 2005, BCE shall file an affidavit 11 with the Court and obviously serve on counsel all of its 12 efforts to get the relevant documents from the three Canadian 13 entities. And I will say that if the three Canadian entities 14 are not willing to cooperate, BCE will be precluded from 15 using any of that evidence in trial.</p> <p>16 With respect to the last search, the option for 17 BCE is to either take a narrow swipe at 2900 folders or the 18 whole deal of the 645 folders that have Teleglobe.</p> <p>19 Now, the search terms that I have tentatively 20 identified, and I will allow a few more to be added to that 21 by Teleglobe, but the ones that I have selected initially, 22 and it's hard for me to -- well, let me go through them. On 23 the first page, it's one, two, three, four, five, it's the 24 sixth, seventh and eighth one down, starting with Teleglobe 25 or TG or TGO, 40, et cetera.</p>

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<p>1. MR. WADE: Support?</p> <p>2. THE COURT: Yes. The one that follows, Deloitte</p> <p>3. or DT or D near 3, et cetera, and the next one down:</p> <p>4. Deloitte or DT or D near 3, et cetera.</p> <p>5. So those are the three on that page. And, again,</p> <p>6. after I've gone through this, I will allow the Teleglobe</p> <p>7. parties to add a few more. I don't know how many more, but</p> <p>8. not -- certainly not more than six.</p> <p>9. On the second page, I'm looking at one, two,</p> <p>10. three, four, the fifth one down. Bell or BCE or Bell Canada</p> <p>11. near 40, et cetera.</p> <p>12. The seventh one down, Synergy Project or Project</p> <p>13. X.</p> <p>14. The 12th one down, Solvent or liquidate or</p> <p>15. insolvent or restruct near 99, et cetera.</p> <p>16. I've lost count. And then 14, 15 and 16. Commit</p> <p>17. or commitment or committed or promised or planned or intend</p> <p>18. or intention to propose near 20 Teleglobe, and the two that</p> <p>19. follow that.</p> <p>20. And on the final page, I just have one</p> <p>21. highlighted, and that's the independent committee near 20,</p> <p>22. Teleglobe or TG or TGO or more.</p> <p>23. Now, if there are others for -- if there</p> <p>24. are others that Teleglobe believes, a few others that</p> <p>25. Teleglobe believes are more likely than others to come</p>	<p>1. publicly reiterating support and commitment for Teleglobe's</p> <p>2. funding and financing, so that's important to us.</p> <p>3. Two below the last one your Honor chose on Page</p> <p>4. 1, it begins, A-n-a-l-y star. That's analyze or assess. It</p> <p>5. is a brood one. However, your Honor it picks up analysis of</p> <p>6. good will, going concern, which are both very key, we think,</p> <p>7. for proving solvency or lack thereof in this case. That's</p> <p>8. two, your Honor.</p> <p>9. The third is the very first one at the top of the</p> <p>10. next page. Again, this relates to infusing money into the</p> <p>11. enterprise, which winds up often in documents being</p> <p>12. associated with commitments based on our review.</p> <p>13. And finally, your Honor, the second to last</p> <p>14. one --</p> <p>15. MR. WADE: Excuse me. What number on the second</p> <p>16. page is that?</p> <p>17. MR. VARALLO: The very first one.</p> <p>18. THE COURT: The first one.</p> <p>19. MR. WADE: Sorry. Didn't hear that.</p> <p>20. MR. VARALLO: That's all right. I will try to</p> <p>21. speak up a little bit.</p> <p>22. The second to last one on the second page, your</p> <p>23. Honor, the one that's good will or good will or write-down,</p> <p>24. near 40 value or impair. Again, that's similar to what your</p> <p>25. Honor chose immediately above it, but the one your Honor</p>
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<p>1. up with relevant documents and not be as broad as they</p> <p>2. seem to be, I'm happy to entertain a few more. And if you</p> <p>3. need a moment to discuss that with your expert there, I'm</p> <p>4. happy to let you do that.</p> <p>5. MR. VARALLO: Thank you, your Honor.</p> <p>6. THE COURT: And I might take a break. I want to</p> <p>7. go out and find out. I swear I remember doing something</p> <p>8. about the special master. I'm going to try to track down</p> <p>9. what I did. So I will be back momentarily.</p> <p>10. (Short recess taken.)</p> <p>11. THE COURT: My staff person who helps me left for</p> <p>12. the day left long ago, so I will have to follow up on that</p> <p>13. special master. I can remember writing it. I don't know</p> <p>14. what happened to it. All right.</p> <p>15. MR. VARALLO: Thank you, your Honor.</p> <p>16. Your Honor invited us to take a look at the</p> <p>17. search terms in light of your Honor's ruling and propose up</p> <p>18. to six. I'm happy to say I'm going to propose up to four, if</p> <p>19. that would be acceptable.</p> <p>20. THE COURT: All right.</p> <p>21. MR. VARALLO: Your Honor, the additional terms</p> <p>22. we'd like searched are on the first page, above the first</p> <p>23. one, your Honor indicated Teleglobe or TG or TGO. There's</p> <p>24. one that says Monty near 40 support continues. We'd like</p> <p>25. that one searched because Mr. Monty is the one who was</p>	<p>1. chose specifically relates to Teleglobe. This is more</p> <p>2. broader.</p> <p>3. THE COURT: All right.</p> <p>4. MR. VARALLO: Thank you, your Honor.</p> <p>5. Your Honor, without troubling you any more, my</p> <p>6. friend, my colleague, indicates to me that when I addressed</p> <p>7. the four witnesses, we had actually been corresponding about</p> <p>8. a number of additional ones. I would like to inquire through</p> <p>9. counsel, through the Court of counsel whether, if there are</p> <p>10. other senior executives that have a small number of</p> <p>11. documents, we could work together to get those searched in</p> <p>12. some appropriate way.</p> <p>13. THE COURT: Well, again, it's all a matter of</p> <p>14. balancing burden with benefit. If we're talking about one or</p> <p>15. two more, yes. If you are talking about 12 more, no.</p> <p>16. MR. VARALLO: Your Honor, I was talking about</p> <p>17. three more, actually.</p> <p>18. THE COURT: Three more. Do you want to name</p> <p>19. them?</p> <p>20. MR. VARALLO: Certainly, you. Sabia, Vanaselja</p> <p>21. and Skinner. Vanaselja, apparently we have 23 e docs.</p> <p>22. Skinner, 336. Sabia, we have 496. There are more docs, but</p> <p>23. they're very senior executives and simply not that many for</p> <p>24. senior executive corps.</p> <p>25. THE COURT: Well, they seem to be not in the same</p>



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<p>1 group as the four. I think maybe we'll leave them off the</p> <p>2 list at this point.</p> <p>3 MR. VARALLO: Thank you, your Honor.</p> <p>4 MR. WADE: Could we have just one second, your</p> <p>5 Honor?</p> <p>6 THE COURT: Certainly.</p> <p>7 (Pause while counsel conferred.)</p> <p>8 MR. VARALLO: Your Honor, while my colleague is</p> <p>9 conferring, to the extent you wanted our input as to the</p> <p>10 choice between the narrower search and the broader search on</p> <p>11 the folders, we'd prefer the narrower search on the broader</p> <p>12 number of folders, if that matters.</p> <p>13 THE COURT: You probably shouldn't have said that</p> <p>14 because they'll probably choose to do the other just out of</p> <p>15 spite.</p> <p>16 MR. WADE: Your Honor, two things. Let me go</p> <p>17 reverse on that and say so do we.</p> <p>18 THE COURT: Okay.</p> <p>19 MS. AARON: Well, no.</p> <p>20 THE COURT: Maybe not.</p> <p>21 MS. AARON: We need to talk about that.</p> <p>22 MR. WADE: We will talk about it.</p> <p>23 THE COURT: All right.</p> <p>24 MR. WADE: With respect to the second one that</p> <p>25 Mr. Varallo mentioned, which is on the first page,</p>	<p>1 With respect to Mr. Lessard, there are lots of</p> <p>2 witnesses. He's not among the most important. We think</p> <p>3 we can identify the backup tape with his e-mails. With</p> <p>4 respect to other electronic documents, we think that they're</p> <p>5 on another server where the backup tape situation is much</p> <p>6 more confused and we're going to look into it to see if</p> <p>7 perhaps there's a way around it, but we're dubious, so I just</p> <p>8 wanted to alert the plaintiffs that we might be making some</p> <p>9 request for a little indulgence and mercy as to those.</p> <p>10 THE COURT: All right. And if there are</p> <p>11 technical issues, then -- oh, that your technical people,</p> <p>12 your affiants who, you know, are talking to us about e data</p> <p>13 retrieval and the expert who came with plaintiffs' counsel,</p> <p>14 it seems to me sometimes I think the lawyers should leave the</p> <p>15 room and let those folks work it out to see if the technical</p> <p>16 problems can be resolved. So I hope that you take advantage</p> <p>17 of the expertise. All right?</p> <p>18 MS. AARON: Thank you, your Honor.</p> <p>19 THE COURT: All right. Any issues from</p> <p>20 defendants' side of the table that we should address before</p> <p>21 we disengage this evening?</p> <p>22 MR. WADE: Not that we have not already talked</p> <p>23 about.</p> <p>24 THE COURT: All right. So there's an August 31</p> <p>25 deadline. I will make sure that I address the privilege</p>
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<p>1 we're -- it looks, if you just think of Teleglobe, it</p> <p>2 looks reasonable. But what's on these folders, what's in</p> <p>3 these folders applies across the board to a conglomerate</p> <p>4 company, and the amount of -- for our purposes in this</p> <p>5 case, junk will be extremely high, because it will all be</p> <p>6 about Vanaselja's budgets and express views budgets and all</p> <p>7 the rest of it.</p> <p>8 THE COURT: Well, I wish you had sat down and</p> <p>9 talked about these a little bit more carefully. It is down</p> <p>10 to 2900 folders, not 30,000. I basically made my decision,</p> <p>11 so it's a little late to be discussing it now.</p> <p>12 MR. WADE: Okay. I just wanted to note an</p> <p>13 objection to that one.</p> <p>14 THE COURT: All right. Your objection is duly</p> <p>15 noted.</p> <p>16 MR. WADE: Thank you.</p> <p>17 THE COURT: All right. Are there any other</p> <p>18 issues that we should be addressing?</p> <p>19 MR. VARALLO: Not from this side of the table,</p> <p>20 your Honor.</p> <p>21 THE COURT: All right. Let's hear from defense</p> <p>22 counsel.</p> <p>23 MS. AARON: On the backup tapes, your Honor,</p> <p>24 we've been looking into what's available and what's</p> <p>25 accessible.</p>	<p>1 issues within the next week, and if there are other issues</p> <p>2 that need to be addressed, I don't know that we have another</p> <p>3 discovery conference scheduled. I don't know that I want to</p> <p>4 do that in the absence of an e-mail from you all saying</p> <p>5 there's something you can't work out.</p> <p>6 I truly hope we can manage to get through the</p> <p>7 rest of August without a discovery dispute, though. All</p> <p>8 right?</p> <p>9 All right. Thank you very much, counsel.</p> <p>10 (Counsel respond, "Thank you, your Honor.")</p> <p>11 (Court recessed at 6:00 p.m.)</p> <p>12 ---</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>